

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NEXT IT CORPORATION, a
Washington Corporation,

Plaintiff,

v.

SHANTANU ROY and JENNIFER
ROY, husband and wife; JOSH
KNOWLES, a single person, and
NDALL SOLUTIONS, LLC, an
Idaho corporation,

Defendants.

NO. CV-05-380-LRS

**AMENDED ORDER GRANTING
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE;
DENYING MOTION FOR EXPEDITED
DISCOVERY; SETTING FURTHER
STATUS CONFERENCE TO
ESTABLISHING A CASE MANAGEMENT
SCHEDULE¹**

Plaintiff is a Washington corporation in the business of software development and services. Plaintiffs have filed a Verified Complaint (Ct. Rec. 1), seeking a preliminary and permanent injunction and other relief, including redress for misappropriation of trade secrets and

¹ Pursuant to the Court's December 2, 2005 Order, the Court held a status conference on December 7, 2005. At that time it was agreed upon by all parties that the Court: 1) insert the words "other than Delex" into paragraph three; 2) hold a status conference in January, after some discovery has occurred; and 3) keep the temporary restraining order in effect pending further order of the Court. The parties also indicated their willingness to work out the details of early discovery without necessity of a Court order at this time. This order is amended to supplement and memorialize the Court's December 7th, 2005 oral rulings on these issues.

1 breach of contract associated with the defendants' alleged creation of
2 a competing enterprise and taking of plaintiff's proprietary information.
3 BEFORE THE COURT is Plaintiffs' Motion for Temporary Restraining Order,
4 Expedited Discovery and Order to Show Cause filed December 1, 2005 (Ct.
5 Rec. 3). On December 2, 2005, a telephonic hearing was held. Todd Reuter
6 participated on behalf of the Plaintiff, John Guin participated on behalf
7 of Defendants Roy and Ndall, Mike McMahon participated on behalf of
8 Defendant Knowles, and Rob Grier participated on behalf of third-party
9 Delex.

10 The Court has reviewed all pleadings contained in the Court file,
11 including the verified complaint and exhibits thereto, the memorandum
12 filed in support of Plaintiff's motion, the Affidavit of Jim Hereford and
13 the motion. In addition, the Court has reviewed the declarations
14 produced at the time of the hearing, including the Declaration of Garnett
15 "Sandy" Clark (Ct. Rec. 12) and the declaration of Defendant Josh
16 Knowles. Having considered these pleadings and now having received oral
17 argument and being advised in the premises finds that:

18 a. This Court has jurisdiction of the subject matter of this case
19 and of all the named parties.

20 b. The Plaintiff has demonstrated a reasonably sufficient
21 likelihood of ultimate success in establishing that the Defendants have
22 engaged, and are continuing to engage, in acts and practices that violate
23 state and federal law, as well as the parties employment and non-compete
24 agreements.

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1 c. There is good cause to believe that an immediate irreparable
2 injury, loss, or damage will result to the Plaintiff, to wit, the loss
3 of trade secrets and proprietary information, as well as the potential
4 loss of customers and future business contracts, unless Defendants are
5 immediately restrained and enjoined by order of this Court. The trade
6 secrets and proprietary information includes a valuable computer source
7 code, which is the product of extensive research and development efforts
8 of the Plaintiff. The Defendants have had access to this information and
9 appear poised to take and use that information, thus causing immediate
10 and irreparable injury, loss or damage to plaintiff.

11 d. Weighing the equities and considering the Plaintiff's
12 likelihood of ultimate success, a temporary restraining order would be
13 in the public interest.

14 e. Though the Defendants were all contacted in advance of the
15 hearing and participated in the hearing, counsel had very little time to
16 consider the Plaintiff's pleadings by the time of the hearing. The Court
17 considers this Order as granted without meaningful notice because the
18 injury complained of appears imminent and irreparable. The Individual
19 Defendants had access to key source code and customers. They have the
20 expertise to use that code and have formed a competing enterprise for the
21 apparent purpose of doing so. The loss of control over that code and the
22 loss of customers cannot be fully compensated for with money damages.
23 Further, Plaintiff has or will post bond to protect the interests of the
24 Defendants in an amount the parties have expressly agreed to.

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1 Based upon the above considerations,

2 **IT IS THEREFORE ORDERED** , that Plaintiff's Motion for Temporary
3 Restraining Order, Expedited Discovery, and Order to Show Cause (Ct. Rec.
4 3) is **GRANTED IN PART**. That portion of Plaintiff's motion requesting a
5 Court order granting expedited discovery shall be **DENIED without**
6 **prejudice to renew**, in light of the parties' indications that such order
7 is not necessary at this time as all parties are willing to work out the
8 details of early discovery by stipulation.

9 **IT IS FURTHER ORDERED**, that the Defendants and each of them,
10 including all persons in active concert and participation with them, are
11 hereby:

12 1. Enjoined from using, disclosing or transferring any Next IT
13 proprietary information, trade secrets, or other confidential business
14 information obtained during the Defendants' employment with Next IT;

15 2. Enjoined from soliciting, calling on or providing competing
16 services for any person or entity for whom Next IT provided services
17 during Defendant's term of employment with Next IT, said services to
18 include the design, coding, testing, installation, service or maintenance
19 of products in Next IT's commercial space, including agent technology,
20 indexing, web scraping, web applications, security, and artificial
21 intelligence;

22 3. Enjoined from soliciting, calling or providing competing
23 services for any person or entity, other than Delex, whose name Defendant
24 became aware of during their employment with Next IT;

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1 4. Enjoined from directly or indirectly recruiting or encouraging
2 any employee of Next IT to accept employment or other business
3 relationship with an employer, person or entity other than Next IT;

4 5. Enjoined from destroying, altering, erasing, deleting,
5 fragmenting, disposing or otherwise spoiling any documents, electronic
6 data, computer and related equipment, materials, or other vehicle for
7 information storage that may be relevant to the determination of the
8 issues presented in this lawsuit; and, is further ordered to preserve all
9 written, electronic or other tangible communications created or received
10 during the period Jan. 1, 2004 to present;

11 6. Ordered to appear before this court at the time and place to be
12 ordered by the Court in a following order and show cause why a
13 preliminary injunction should not be entered pending final judgment of
14 the court in this action. The Court will establish the time and place
15 of the preliminary injunction hearing at a follow up telephonic hearing
16 on **FRIDAY, JANUARY 20, 2006 AT 11:00 A.M. The parties shall call the**
17 **Court's public conference line (509-376-1330) at the time of the hearing.**

18 The parties shall also, if possible, submit a joint proposed
19 scheduling order in advance of the hearing which addresses pre-hearing
20 deadlines including, but not limited to, the filing of any cross-motions
21 and briefing for the preliminary injunction hearing, the exchange of
22 witness and exhibit lists, and the submission of Proposed Findings of
23 Fact and Conclusions of Law.

24 **IT IS FURTHER ORDERED** that in accordance with the representations
25 made by counsel for third-party Delex, Delex is ordered to comply with
26 paragraph numbers one, five and six set forth above.

1 **IT IS FURTHER ORDERED** that Next IT shall post security in the amount
2 of **\$2,000** for the payment of Defendants' costs and damages that may be
3 incurred in the event Defendants are found to be wrongfully enjoined or
4 restrained by this Order. Such security shall be posted no later than
5 **MONDAY, DECEMBER 5, 2005 at 5:00 p.m..**

6 The Temporary Restraining Order shall remain in effect until further
7 order of the Court.

8 **IT IS SO ORDERED.**

9 The District Court Executive is directed to file this Order and
10 provide copies to counsel.

11 **DATED** this 8th day of December, 2005.

12 *s/Lonny R. Suko*

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14 LONNY R. SUKO
15 UNITED STATES DISTRICT JUDGE
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